

Eliminating Discrimination and Creating Corridors to Expand Student Success Act of 2019 (ED ACCESS Act)

The Problem

The American Opportunity Tax Credit (AOTC) is the primary tax credit available to students seeking a higher education. Currently, students with a felony drug conviction are permanently ineligible for this tax credit. As studies have shown, education significantly reduces rates of recidivism.¹ Denying the AOTC to students with felony drug convictions makes it even harder for this population to afford college and get their life on track. Making college less affordable for people convicted of drug felonies is not an effective deterrent for drug crime, and no such restriction exists for other types of felonies, such as murder.

The Legislation

The ED ACCESS Act would repeal the lifetime ban that prohibits students with felony drug convictions from claiming the AOTC.

The American Opportunity Tax Credit

The AOTC is worth up to \$2,500 per year, and unlike other education tax benefits, up to \$1,000 of the AOTC is refundable. This means that lower-income taxpayers can receive a benefit even if they have no federal income tax liability. Students are eligible for the AOTC if they have completed less than 4 years of post-secondary education; are pursuing a degree or credential; and are enrolled at least half time. A federal or state felony drug conviction makes students permanently ineligible for the AOTC.

Students who are ineligible for the AOTC, including those with felony drug convictions, may be eligible for the less generous Lifetime Learning Credit. This is worth up to \$2,000, none of which is refundable. A student needs at least \$10,000 of eligible higher education expenses to claim the maximum Lifetime Learning Credit, compared to \$4,000 of expenses to claim the maximum AOTC.

History of the AOTC drug felony ban

The AOTC felony drug ban dates back to Georgia state law in the 1990s, when the state created the Hope Scholarship but prohibited it from going to students with drug convictions. President Bill Clinton modeled his proposed Hope Scholarship Tax Credit on the Georgia policy – including the felony drug ban – and Congress enacted it in 1997. Congress expanded the Hope Scholarship Tax Credit and renamed it as the American Opportunity Tax Credit in 2009, but kept the felony drug ban in place.

In prior Congresses, the AOTC's felony drug ban would have been repealed in broader overhauls that were proposed for education tax credits. One such bill was the Student and Family Tax Simplification Act, which passed the House in the 113th Congress and was introduced by Rep. Diane Black (R-TN) and Rep. Danny Davis (D-IL). Another such bill was the PARTNERSHIPS Act, which Sen. Ron Wyden (D-OR) and Sen. Jeff Merkley (D-OR) introduced in the 114th Congress.

¹ Rand Corporation, “How Effective Is Correctional Education, and Where Do We Go from Here?” online at https://www.rand.org/pubs/research_reports/RR564.html.